

**IN THE COURT OF THE III ADDITIONAL CHIEF  
METROPOLITAN MAGISTRATE AT BENGALURU.**

**Present : Shreyansh Doddamani  
III ADDL. C.M.M., BENGALURU.**

**Dated this the 28<sup>th</sup> Day of March, 2024**

**CC No.14394/2020**

**Complainant : State by Ashoka Nagara Police  
Station, Bengaluru.**

**(Represented by Sr. APP)**

**V/s**

**Accused : 1. Sri.Jojan George Jacob  
2. Diya Mary Jojan**

**Boath are Residing at  
No.31/7, Loyola Layout,  
Victoria Road,  
Bengaluru City.**

**(Repted., by Adv.,)**

**ORDER ON APPLICATION UNDER SECTION 239 OF  
CRIMINAL PROCEDURE CODE**

The accused No.1 and 2 have filed application under section 239 of Criminal Procedure Code for discharge them for the offences punishable under section 406, 418, 420, 120(B) read with section 34 of Indian Penal Code.

2. In the application it is contended that the complainant Police have filed case against the accused for the offences punishable under section 120(B), 403, 415, 420, 471

read with section 34 of Indian Penal Code. The accused No.2 and son of the complainant had a partnership concern due to fallout between the partners the partnership concern came to be dissolved. In order to implicate the accused persons in criminal proceedings the present complaint has been filed. The dispute between the complainant son and the accused is civil in nature. The Police have without proper investigation mechanically filed charge sheet without considering the actual aspects involved. They are innocent of the said offences. The alleged offence is not punishable either with imprisonment for life or death. The complainant has died due to Covid-19 and thereafter the counsel for complainant not appearing before this court and this court has the jurisdiction under section 249 of Cr.PC to discharge the accused. The false complaint filed by the complainant only with an intention to harass the accused No.1 and 2. The Police yielding to political pressure have mechanically proceeded to file charge sheet. The prosecution has not produced any documentary evidence as to substantiate the commission of the offence by the accused. Hence, the accused No.1 and 2 prayed to discharge them from the above offences.

3. The learned Sr.APP has filed objection to the above application by denying the contents of application and contended that the application is not maintainable either in law or on facts and reiterated the contents of the complaint. The Police have filed charge sheet against the accused persons for the offences punishable under section 406, 418, 420, 120(B) read with section 34 of IPC. After registration of the

case the IO collected the relevant documents regarding involvement of the accused persons for framing the charge. The learned Sr.APP also relied citation (2020) 1. Supreme Court Cases (Cri) 581, (2020) 2. Supreme Court Cases 217. The accused have not made out any tenable ground to seek discharge. The evidence collected by the IO at the time of framing of charge need not to be considered meticulously. Truth and veracity of the evidence need not to be taken into consideration while framing the charge. The accused have not made out any tenable ground to seek discharge. Hence, prayed to reject the application.

4. Heard the arguments on both side.

5. The point that arises for the consideration of the court is as under;

**1. Whether the application filed by the accused No.1 and 2 are deserves to be allowed?**

**2. What order?**

6. Perused the records. The above point is answered in the **Negative** for the following;

### **REASONS**

7. **Point No.1:** This case is arising out of the Police report based on the information given by the complainant Sri.M.C.Kashivishwanath. The complainant has filed private complaint before this court in PCR No.15908/2019. After institution of private complaint this

court referred the case to the Ashoka Nagara Police Station for investigation under section 156(3) of Cr.PC. The SHO of Ashoka Nagara Police Station registered the Crime No.17/2020 and investigated the matter and submitted charge sheet. As per the prosecution case the accused No.1 and 2 stated to the CW-1 that if invested the amount they have issued 50 % partnership provide to him. Accordingly, the CW-1 invested of Rs.30 lakhs. The accused No.1 and 2 misused the said amount for their personal use and not used the said amount for business purpose and thereby they were joined together and committed the offences punishable under section 406, 418, 420, 120(B) read with section 34 of IPC.

8. The accused have filed this application under section 239 of Cr.PC by stating that the accused have not committed any offences. The Police have filed charge sheet falsely on the basis of political influence and there was no grounds. It clearly shows that the application filed by the accused there are no grounds to discharge the accused persons.

9. The Court has to looked only charge sheet and materials placed by I.O. Whether the accused have been committed above offences or not is to be decided only after the full fledged trial. Only on the bases of denial of allegations it can not be discharged the accused for the above offences at this stage. It is relevant to note that the grounds urged by the accused are the good grounds for taking as defence but not discharge at this stage.

10. As per the provision U/Sec.239 of Cr.P.C., if there is no grounds or materials to frame the charges against the accused persons then only the Court can discharge the accused persons. For more clarification the provision U/Sec.239 of Cr.P.C., extracted as under:

**Section 239 in The Code Of Criminal Procedure, 1973**

***239. When accused shall be discharged. If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.***

***Essential elements for Discharge:***

***The Court have to consider the Charge sheet and documents appended thereto by the Police under Section 173, Cr.P.C:***

***•The Magistrate may, if he deems fit, examine the Accused.***

***•Thereafter the arguments of both the Prosecution and the Accused should be heard.***

***•Grounds against the accused to be baseless  
There should not be any evidence present against the accused. If the Court considers that there is no prima-facie case against the accused.***

***If all the above conditions are fulfilled, then the Accused shall be discharged.***

11. In view of the above provision it clears that if in the charge sheet no grounds or materials available to frame the charge for the above offences against the accused persons or no evidence found against the accused persons for commission of alleged offences then only the court can discharge the accused persons. Mere contention or defense as there is no grounds or accused not committed above offences and falsely implicated and offences not attracted against him are not grounds to discharge the accused person. The grounds for discharge shown in the application is good ground for taking defence in trail, but not discharge the accused person at this stage. As per the materials available on record there are sufficient materials to frame the charge for the offences punishable under section 406, 418, 420, 120(B) read with section 34 of Indian Penal Code. Therefore, there are no grounds in the application to discharge the accused No.1 and 2. The accused have filed this application for drag the matter. Therefore, this Court has answered the Point No.1 in the Negative.

12. **Point No.2:-** In view of the above decision, this Court has proceed to pass the following:

**//ORDER//**

**The Application filed by the  
accused No.1 and 2 under section 239  
of Code of Criminal Procedure is  
hereby rejected.**

(Dictated to the stenographer directly on computer, corrected and then pronounced by me in the open court on this the 28<sup>th</sup> day of March, 2024)

**III ACMM, Bengaluru.**